

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:INTL:B02

PLR-135474-09

Date:

January 27, 2010

TY:

LEGEND

Taxpayer =

Parent =

Location A =

Date B =

Date C =

Type D =

Law E =

Type F =

Year G =

Date H =

X =

Y =

Z =

Dear :

This is in response to a letter received by our office on July 31, 2009, submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to (1) make the election provided by section 953(d) of the Code to be treated as a domestic corporation for U.S. tax purposes commencing on the first day of Taxpayer's taxable year ending on Date C and

(2) make the election provided by section 831(b) to be subject to the alternative tax for certain small insurance companies for the taxable year ending on Date C.

The rulings contained in this letter are based upon the information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the factual information, representations, and other data submitted may be required as part of the audit process.

Taxpayer was incorporated under the laws of Location A on Date B. Taxpayer is wholly owned by Parent, a domestic limited liability company. Taxpayer is licensed as a Type D insurer under Law E. Taxpayer was formed to carry on various kinds of insurance and reinsurance activities. Since its inception, Taxpayer has engaged in the reinsurance of Type F policies. From Taxpayer's inception through Date C, Taxpayer received net earned premiums of \$X and investment income of \$Y. Taxpayer's retained earnings for the year ended Date C totaled \$Z.

In the course of forming and initiating the operations of Taxpayer, Parent and Taxpayer retained the services of several professional firms, including an accounting firm and a risk management firm. During Year G, the accounting firm advised Parent and Taxpayer of the tax consequences of making elections under sections 953(d) and 831(b) of the Code and was informed of Taxpayer's desire to make those elections. A director of Taxpayer represented that Taxpayer believed the elections would be prepared by the accounting firm for the tax year ending Date C.

On or about Date H, Taxpayer contacted the accounting firm to inquire about the status of its section 953(d) and 831(b) elections. Shortly thereafter, the accounting firm determined that the necessary extension forms for Taxpayer had not been filed by the March 15 deadline. The accounting firm submitted an affidavit stating that (1) the failure to file Form 7004 to extend the filing period for Taxpayer's Form 1120 PC, and to extend the timely period to make the elections under sections 953(d) and 831(b), was solely a result of miscommunication within the accounting firm and on the part of the accounting firm and (2) Taxpayer had no reason to believe that the accounting firm was not competent to render professional advice on the elections, or that the accounting firm would not file the necessary extension forms by the due date. Taxpayer has not been notified by the IRS as to its failure to file the requested elections.

The substantive and procedural rules for making a section 953(d) election are contained in Notice 89-79, 1989-2 C.B. 392, and Rev. Proc. 2003-47, 2003-2 C.B. 55, respectively. Section 4.04(2) of Rev. Proc. 2003-47 provides that, for a section 953(d) election to be effective for a taxable year, the original election statement must be filed by the due date prescribed in section 6072(b) (including extensions) for the U.S. income

tax return that is due if the election becomes effective. In this case, the section 953(d) election was not filed by the due date of the return for the tax year ended Date C.

Generally, insurance companies other than life insurance companies are taxable under section 831(a) on their taxable income. However, certain eligible companies pay an alternative tax, provided in section 831(b), based only on their taxable investment income. Section 831(b)(2)(A)(ii) requires that a company elect the application of the alternative tax imposed by section 831(b) for the taxable year. The statute does not contain a due date. The election under section 831(b)(2)(A) is listed in section 301.9100-8(a) of the regulations as section 1010(f)(1) of the Technical and Miscellaneous Act of 1988 and is available for taxable years beginning after December 31, 1986. Section 301.9100-8(a)(2) prescribes the time and manner for making the election under section 831(b)(2)(A)(ii) of the Code. That section provides that the election must be made by the later of ---

- (A) the due date (including extensions) of the tax return for the first taxable year for which the election is effective, or
- (B) January 22, 1990.

Treas. Reg. § 301.9100-8(a)(3) also provides that if the tax return has not been filed prior to making the election under section 831(b)(2)(A)(ii), the election must be made by attaching a statement to the tax return for the first taxable year for which the election is to be effective. If such tax return is filed prior to the making of the election, the statement must be attached to an amended tax return of the first taxable year for which the election is to be effective. Taxpayer's section 831(b) election was not timely made in accordance with these provisions.

Treas. Reg. § 301.9100-1(c) provides that the Commissioner has the discretion to grant a taxpayer a reasonable extension of time, under the rules set forth in Treas. Reg. § 301.9100-3, to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that an election includes an application for relief in respect of tax, and defines a regulatory election as an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time to make regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer

acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Treas. Reg. § 301.9100-3(b)(1) provides that, except as provided in Treas. Reg. § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief before the failure to make the regulatory election is discovered by the IRS; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the IRS; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Treas. Reg. § 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably or in good faith if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed within the meaning of Treas. Reg. § 1.6664-2(c)(3)) and the new position requires or permits a regulatory election for which relief is requested, (ii) was informed in all material respects of the required election and related tax consequences but chose not to file the election, or (iii) uses hindsight in requesting relief.

Treas. Reg. § 301.9100-3(c)(1)(i) provides, in part, that the interests of the Government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Treas. Reg. § 301.9100-3(c)(1)(ii) provides, in part, that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made is closed, or any taxable years that would have been affected by the election had it been timely made are closed, by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief.

Rev. Proc. 2003-47 fixes the time to make the section 953(d) election and Treas. Reg. § 301.9100-8(a)(2) fixes the time to make the section 831(b) election. Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time to make the elections, provided that Taxpayer satisfies the standards set forth under Treas. Reg. § 301.9100-3(a).

Based solely on the facts and information submitted, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a) with respect to the section 953(d) election. Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to make the election provided by section 953(d), in accordance with the

procedures set forth in Notice 89-79 and Rev. Proc. 2003-47, to be treated as a domestic corporation for U.S. tax purposes commencing on the first day of Taxpayer's taxable year ended on Date C. In addition, based solely on Taxpayer qualifying to make the section 953(d) election, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to make the election provided by section 831(b) for the tax year ended on Date C.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to make the elections under sections 953(d) or 831(b). Treas. Reg. § 301.9100-1(a).

Notwithstanding that an extension of time is granted under Treas. Reg. § 301.9100-3 to make the section 953(d) and section 831(b) elections, penalties and interest that would otherwise be applicable, if any, continue to apply with respect to the income tax return for the tax year ended on Date C.

A copy of this ruling letter should be included with Taxpayer's section 953(d) and section 831(b) elections.

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely,

Phyllis E. Marcus
Chief, Branch 2
Office of the Associate Chief Counsel
(International)